Sectt. II-27,-45,004—14-11-29.

Law (Excl) (1930) Department.

MS SERIES.

G.O. No. 1700

DATED 12-4-30

[Despatch Abstract.]

Motor Vehicles - Driver's licence - Chellayya - (South Kanara District) - permanently disqualified from obtaining a license.

LAW (GENERAL) DEPARTMENT. LG 1600 A.F. 30 7.4.30

Received ... 192 . *Registered* ... 192 .

Subject.

Motor Vehicles - driving licence - Chellaya - permanent disqualification - recommended.

ENCLOSURES.
No ...
...
Spare copies ...

Ref. Gl.No.-3226-1930.

Station Camp Udipi *Dated the* 2nd April 1930.

From (Name) G. W. Wells, Esquire, M.A., I.C.S.,

(Designation) Dt. Magistrate of South Kanara.

To The Secretary to the Government of Madras,

Law (General) Department,

Madras.

Sir,

Sec. 18(1)(ii) B27 Mo. Vehicles Act

I recommend that Government may be pleased to declare, under Section 18 (2) of the Indian Motor Vehicles Act 1914, Chellayya, son of Manikkam of Bolar, Mangalore Town permanently disqualified from holding a driving licence under the Act.

B3 Ref

2. I enclose a copy of the judgment, dated 4th March 1930 of the Sub Divisional Magistrate, Mangalore Division in C.C.5 of 1930 on his file, in which Chellaya was convicted under Section 304 A I.P.C. and Section 5 of the Motor Vehicles Act, and was sentenced to undergo Rigorous Imprisonment for 4 months and to pay a fine of Rs.20/-. The facts of the case are stated in paragraph 2 of the judgment. Chellaya was found guilty by

B3 Ref

the Sub Divisional Magistrate of having rashly and negligently driven a private Motor Lorry S.K.218 on 11th January 1930, on the road from Bramsarkutlu to Mangalore, and of having thereby caused the death of one Narayana Shetty. The prosecution witnesses proved that Chellaya was drunk at the time, and that he was driving at a furious speed, in spite of their protests.

3. The driving licence held by Chellaya No.175 of 12-2-1926 of Salem District expired on 13th February 1930. His conviction and sentence have been confirmed by the Sessions Judge of South Kanara in appeal, with an observation that the sentence passed by the Sub Divisional Magistrate is a lenient one. A copy of the judgment of the Sessions Judge is also enclosed.

4. Motor traffic has become heavy in this district, and it is necessary in the interests of public safety, that persons who cannot act, with a feeling of responsibility, should not be allowed to drive Motor Vehicles at any time.

Your obedient servant,

For Dt.Magistrate.

4.4.30

M.D'S.4/4.

Judgment.

The Station House Officer, Mangalore Taluk Station has charged the accused under section 304 A I.P.C. and section 5 of the Motor Vehicles Act.

2. The facts of the case are these:-The accused was a driver of a motor lorry S.K.218 belonging to D.W.3 who is a Local Fund contractor. On the evening of 11-1-30 the lorry was proceeding from Brammarakutlu to Mangalore with some empty casks in it. The accused was driving it. Near Kannur Bandasale about the 6th mile from Mangalore the accused picked up three passengers Viz.P.W.S 2,7 and one Narayana Shetty since deceased, who wanted to go to Mangalore. The three passengers stood in the lorry where the casks were placed. It was about 7.30 or 8 P.M.then . The lorry proceeded for about $\frac{3}{4}$ mile and then it suddenly swerved towards the right, knocked against P.Ws 4 and 8 who were on the right edge of the road and fell into the paddy field about five feet lower than the road. P.W.4 and 8 also fell into the field and the three passengers in the lorry were thrown down on the road. All the five sustained injuries and P.W.2 and the deceased Narayana were not conscious. Both of them were taken to the hospital and Narayana died in the hospital the same night at about 2 A.M.

3. 12 witnesses have been examined for the prosecution. P.W.s 1, 11 and 12 have been examined to prove that the deceased was brought to the hospital soon after the accident. P.W.6 is the Sub-Assistant Surgeon who had admitted P.W.2 and Narayana into the hospital and also examined P.Ws 2,7 and the accused and granted wound certificates to them. He swears that Narayana died in the hospital at about 2 A.M. and that he sent intimation of the death Ex.A to the Station House Officer, Mangalore Town Station , P.W.3 who held an inquest Ex.B. The opinion of the Mahazardars was that the death was due to injuries caused by a fall from the lorry. P.W.5 is the Assistant Surgeon who held post-mortem over the dead body of Narayana and granted the

certificate Ex.C. The death was due to the concussion and compression of brain due to the head injury. He is also of opinion that the man must have fallen with his head down. P.W.9 is the Sub-Assistant Surgeon who had examined P.W.8 and granted would certificate Ex.H. P.Ws 4 and 8 say that both of them were walking along the road on its northern (right) edge, that the lorry came from behind them at a high speed, along the middle of the road, swerved towards them and knocked them down into the field and itself also fell into the field throwing the passengers in it on the road. They had not observed the passengers before the accident as it was dark. They add that no whistle or horn was sounded nor was any other sound heard before the lorry knocked against them. P.W.2 and [redacted] were the two passengers who got into the lorry along with the deceased. They say that the accused was drunk at the time, that he was taking the lorry at a furious speed, that they asked him to lower the speed but he would not and that finally they were thrown out on the road and lost consciousness. They are not able to say the cause of their being thrown out.

4. The accused did not cross examine the P.Ws in the first instance. On the above evidence I framed a charge against the accused under Section 304 A I.P.C. and also under Section 5 of the Motor Vehicles Act. He pleaded not guilty to the charge, crossexamined the P.Ws. and examined four witnesses on his behalf.

5. The plea of the accused is that while the lorry was proceeding at the ordinary speed of 15 to 20 miles an hour the inner tube of the right front wheel burst resulting in the lowering of the speed and the swerving of the lorry towards the right and that as the passengers were standing and as the lorry had no top and its sides were only knee high they were thrown out when the lorry swerved.

6. D.W.1 is an Engineer with motor experience. He says that if the right front tyre or tube of a car or lorry moving at a speed of 15 to 20 miles an hour suddenly bursts, the speed of the vehicle will be lowered and the vehicle will swerve towards the right.

D.W.2 is the Sub-Inspector who investigated this case. He has been examined to prove the report of the accused Ex.1 given at the station at about 10.30 A.M. on 12-1-30 regarding the occurrence. In this report the accused states that the right front tube burst and the lorry swerved towards ~~towards~~ the right and fell into the field causing injuries to the passengers. D.W.4 who was the cleaner of the lorry and who was in the lorry at the time speaks to this fact. D.W.3 is the owner of the lorry and he produces a burst tyre M.O.1 and says that that was the tyre that burst that day. It is significant to note that this tyre had a rent about 1 foot long and had inside it moist earth which was admittedly put inside it only a few hours before it was produced. It was impossible that the moisture and the little water found inside it could have remained there for more than 1½ months after which it was produced in court.

7. The main point for consideration is whether the tube of front right wheel burst and the lorry swerved as a result of it and the deceased was thrown out in consequence. No doubt the fact that the tyre burst is mentioned in Ex.I but this report was given at the station at about 10.30 A.M. the next day, though the accident happened at about 8 P.M. the previous day. Moreover the owner of the lorry and the accused had taken good care to remove the wheels of the lorry long before the investigating officer D.W.2 reached the scene though he reached there within two hours after receipt of the report at the station. Further it is stated in Ex.I that the passengers received their injuries while the bus was falling into the field. None of the P.Ws. was questioned by the defence whether the tube had burst. It is admitted that the bursting of the tube causes sound and the P.Ws. say that they heard no sound. The story about the bursting of the tube seems to me to have been introduced for the purpose of the defence and ~~that~~ the facts that the accused and D.W.3 removed the wheels before the arrival of D.W.2 and produced a tube in court with wet mud put into it a few hours before its production go to show that the defence is prepared to have recourse to any means to save its skin. D.W.1 who has been examined by the

defence as an expert says that if the tyre or tube bursts while the vehicle is in motion at a speed of 15 to 20 miles an hour a careful driver with ordinary care will be liable to control the vehicle and prevent it from going out of the road. It is in evidence that the road is 21 feet broad at the place of accident and two buses can conveniently go abreast. The lorry in question swerved to the right, dashed against P.Ws.4 and 8 throwing them into the field and then fell into the field. In that act the passengers were thrown out and one of them met with death as the result of the fall. I have no doubt that the fall which caused the death was the result of rash and negligent act of the accused. I find the accused guilty of the offence both under Section 304A I.P.C. and under section 5 of the Motor Vehicles Act. I convict and sentence him to undergo rigorous imprisonment for four months for the offence under Section 304 A I.P.C. and to pay a fine of Rs.20 for the offence under Section 5 of the Motor Vehicles Act or in default to suffer simple imprisonment for one month.

8. The license issued to the accused has already expired and so no order in regard to it is necessary. A note of the conviction will, however, be made in it.

Sd/- M.S.Pais,
4-3-30,
Sub-divisional Magistrate.

(True copy)

For Dt.Magistrate.

4.4.30

Cr. Mis. 126-16,436—8-2-22.

In the Court of the Sessions Judge of South Kanara.

THE 20th DAY OF March 1930.

PRESENT:—

W. O. Newsam, Esquire, I.C.S., ~~Esq.,~~ *Sessions Judge.*
~~Magistrate.~~

Judgment in Criminal Appeal No. 8 *of* 1930.

From what Court the Appeal is preferred ..	Sub Divisional Magistrate, Mangalore.
Number of the case in that court ..	C.C.No.5 of 1930.
Number of the Appeal	C.A.No.8 of 1930.
Name and description of the Appellant ..	Chellaya, son of Manikkan, residing in Bolar of Mangalore Town.
The sentence and law under which it was imposed in the lower Court.	To undergo rigorous imprisonment for four months for offence under Section 304-A, I.P.C. and to pay a fine of Rs.20/- for the offence under Section 5 of the Motor Vehicles Act or in default to suffer simple imprisonment for one month.
Whether confirmed, modified or reversed, and, if modified, the modification.	Confirmed.

DATE—OF, *or* ON WHICH,					
Presentation.	Filing.	Notice issued by Court to appear.	Appellant ordered to appear.	Hearing.	Order.
12-3-1930.	12-3-30.	17-3-1930.	19-3-1930.	19-3-30.	20-3-30

This Appeal coming on for hearing before me; upon perusing the petition of appeal and the record of the evidence and proceedings, and upon duly considering the same after hearing the arguments of Mr.M.Alvares, Vakil for the Appellant & Mr.G.Somasekar Rao for Public Prosecutor, I do adjudge and pass the following

JUDGMENT.

The appellant, Chellayya, has been convicted under Section 304-A, I.P.C. of causing death by a rash and negligent act, and he has also been convicted under Section 5 of the Motor Vehicles Act (reckless driving).

2. The following facts appear from the evidence. About 8 P.M. on 11th January 1930 the appellant was driving an open Ford Motor Lorry to Mangalore. When about 6 miles from Mangalore he stopped and gave a lift to three persons. He was drunk, and he drove fast and steered badly, so that the passengers who were standing in the body of the Lorry begged him to be

more careful. He had gone less than a mile, after taking up passengers, when he lost control and the Lorry left the road and fell into some fields on the right, knocking down two pedestrians who were on the right of the road. The three passengers fell in the road when the Lorry swerved to the right. The sides of the Lorry are only knee high. Two of them were rendered unconscious by impact with the road and one of them died the same night of concussion in Mangalore Hospital.

3. The defence story is that the right front tube burst, and therefore the driver lost control. It appears that this story is an after-thought. The appellant was stupid enough to try to hoodwink the Magistrate by producing in Court a burst tube with wet earth still in it a month or more after the accident. But by noon the day after the mishap, the Lorry wheels had been removed. Neither the two passengers who survived, nor the two pedestrians who were knocked down heard the loud report which a bursting tube must make. It appears, therefore, to me that the story of a burst front tube is false.

4. But even if accepted as true, it does not furnish a sufficient explanation for the accident nor does it exonerate the driver from the charge of rash and negligent driving. It ought to be possible for a reasonably careful driver to retain control of a vehicle, when a front tube bursts. The road was wide at the point where the accident occurred.

5. The conclusion is irresistible that the Lorry was being driven too fast, and I see no reason to doubt the evidence that the appellant had been drinking and that even before the accident he was unable to steer a straight course. Anyone who has had any experience of the weak steering on an old Ford car will know that the steering is very apt to jam, unless handled circumspectly.

6. The conviction of the appellant is clearly right and I confirm it. The sentence imposed viz., four months' rigorous imprisonment under Section 304-A, and a fine of Rs.20/- with one month's simple imprisonment in default, under Section 5 of the Motor Vehicles Act, is a lenient sentence. I dismiss this appeal.

Mangalore,
20th March 1930.

(Sd) W. O. Newsam,
Sessions Judge.

True Copy.

(Sd) W. O. Newsam,
Sessions Judge.

True Copy.

4.4.30

For Dt. Magistrate.

Law (Genl.) dept.

Cro. 1600A from the Dis. South Kanara no. C1-3226-1930/2

Motor Vehicles – driving license – Chellaya – South Kanara Dt – permanent disqualification

D.S:-

Please see the Dis's letter on pages 1-2 ct.

2. Under rule 22(a) of the Madras Motor Vehicles Rules, a driving licence can have operation for a year only. Beyond that period, a license has no force and its cancellation for a subsequent period does not arise. In the present case, the driving licence ~~already~~ expired on 13-2-1930. What the Dis. recommends is that the driver in question may be permanently disqualified from holding a driving license under the Act. This can be done, only by the Local Govt. under clause (ii) of sub-section (1) of Section 18 of the Madras Motor Vehicles Act, 1914. In the circumstances explained on pages 1-2 ct, the Dis's. recommendation may be accepted. Draft submitted.

9.4.30. The driver was found guilty of driving rashly & negligently & thereby causing a man's death. The evidence shows that he was drunk & drove his bus furiously. He may be permanently disqualified for obtaining a licence 10.4.

C1

11/4/30

Secth. II-8 (b)—12,004—6-11-28.

Law (Genl.) DEPARTMENT.

	Date.	Initials.
When received for Fair-copying.		
When copied ..	12/4	
When examined ..		
When signed ..	12/4	
When despatched ..		

Motor Vehicles – Drivers' licence – Chellaya. (South Kanara Dt.) – permanently disqualify from obtaining a licence.

READ AGAIN G.O. No. ....., dated ..... 192 .

" " " " ..... " ..... 192 .

READ ALSO:—

C. No. 1600A From the Dist. South Kanara, No. C/- 3226-30 dated 2-4- 1930.

" " ..... " " ..... " ..... " ..... 192 .

" " ..... " " ..... " ..... " ..... 192 .

ORDER.

No. 1700, dated 12-4-30 192 .

Under clause (ii) of sub-section (1) of Section 18 of the Indian Motor Vehicles Act, 1914, ~~His Excellency the Governor in Council~~ the Govt hereby declare that Chellaya, son of Manikkam of Bolar, Mangalore Town, shall be disqualified permanently for obtaining a driving licence under the said Act.

AO 10.4.

MBm 9.4.30

BR 10/4

To

The Dist. South Kanara ✓

All other Dists. ✓

The D. I. of Police ✓

The Commsr. of Police ✓

The S. I. P. for publication of the order in the Gazette

All other Local Govts. & Administrs. under C

GOVERNMENT OF MADRAS

Received.....1930. Registered...1930.

Abstract

Motor Vehicles - Driver's license - Chellaya - (South Kanara District) - permanently disqualified from obtaining a license

- -

LAW (GENERAL) DEPARTMENT

G.O. No. Ms. 1700 dated 12th April 1930.

Read the following:-

From the District Magistrate, South Kanara,
No.C1.-3226-30 dated 2nd April 1930.

O r d e r:-

Under clause (ii) of sub-section(1) of section 18 of the Indian Motor Vehicles Act, 1914, the Government hereby declare that Chellaya, son of Manikkam of Bolar, Mangalore Town, shall be disqualified permanently for obtaining a driving license under the said Act.

(By Order of the Governor in Council)

A.F.W.Dixon,
Deputy Secretary to Govt.

To the District Magistrate, South Kanara.
To all other District Magistrates.
To the Inspector-General of Police.
" Commissioner of Police.
" Superintendent, Government Press for publication of the order in the Gazette.
To all other Local Governments and Administrations (with c.l.).

F o r w a r d e d
/By Order/

Superintendent.

SRM.12.4.30.